



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES  
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.November 12, 2009

The Honorable Jack Markell  
Tatnall Building  
William Penn Street, 2nd Floor  
Dover, DE 19901

RE: Executive Order 8 [State Government Equal Opportunity Hiring Standards]

Dear Governor Markell:

The State Council for Persons with Disabilities (SCPD) has reviewed Executive Order 8 which was published as 13 DE Reg. 419 in the September 1, 2009 issue of the Register of Regulations. The Executive Order was issued on August 11, 2009 and Council has previously commented on similar Executive Orders issued by Governor Minner. See attached Executive Order No. 81 [9 DE Reg. 1396 (March 1, 2006)] and Executive Order No. 86 (June 1, 2006).

Council recommends that if revisions are contemplated in the future, the following be considered: 1) apart from the Division of Vocational Rehabilitation (DVR), the SCPD could be mentioned in Par. 4.b based on its enabling statute (29 Del.C. Section 8210) and role with Governor's Commission on Community-based Alternatives for Persons with Disabilities; 2) the recital that the annual OMB report is available to the public (Par. 4c) could be replicated in Par. 6 to clarify that agency affirmative action plans are available to the public; and 3) the provisions of Title 29 Del.C. §5904A (Selective Placement and Agency Aide programs) could be cross referenced or otherwise incorporated into the order since they are often overlooked.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the Executive Order.

Sincerely,

*Daniese McMullin-Powell/jp*

Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

cc: Mr. Greg Patterson  
Ms. Stephanie McClellan  
Mr. Brian Hartman, Esq.  
Developmental Disabilities Council  
Governor's Advisory Council for Exceptional Citizens

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3. The aforesaid sub-allocations have been made with due regard to actions taken by other persons in reliance upon previous sub-allocations to bond issuers.

Approved: January 23, 2006

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State

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**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER NUMBER EIGHTY-ONE:**

**RE: Continuing Equal Opportunity Hiring Standards And Practices For Delaware Government**

**WHEREAS**, Delaware law and/or executive order prohibit discrimination in state employment based on gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, or Vietnam Era veterans status; and

**WHEREAS**, the State of Delaware is committed to providing equal employment opportunities to all Delawareans; and

**WHEREAS**, the State of Delaware is committed to maintaining a high quality workforce that draws upon the talents of our diverse citizenry to operate our government effectively for the benefit of the State's citizens; and

**WHEREAS**, the State of Delaware has succeeded over the years in diversifying its workforce; and

**WHEREAS**, the State of Delaware must continue to vigorously promote equal employment opportunity and a discrimination free workplace; and

**WHEREAS**, the State of Delaware can only achieve equal opportunity and a diverse workforce by continuing and improving an equal employment opportunity program that enforces sound recruitment and promotion practices throughout state government,

**I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, DO HEREBY ORDER AND DECLARE**, this 1st day of February, 2006:

1. The State of Delaware's commitment to equal employment opportunity is hereby affirmed and heads of each Department and Agency within the Executive Branch (collectively "Executive Branch Agencies") are directed to pursue diligently the recruitment and promotion of qualified applicants from diverse backgrounds and to be vigilant in complying with the laws prohibiting discrimination in employment.

2. The work atmosphere in Executive Branch Agencies shall be one that fosters mutual respect and understanding among persons of different gender, race, color, religion, national origin, marital status, disability, sexual orientation or Vietnam Era Veterans status.

3. Paragraphs 1 and 2 of this Executive Order are directives from the Governor to Executive Branch Agencies. They will be vigorously enforced by the Governor. However, they are not intended to and shall not create independent causes of action for or on behalf of persons who allege a lack of compliance with those paragraphs.

4. The Governor's Council on Equal Employment Opportunity (hereinafter "Council") is continued. The function of the Council shall be to assist in the monitoring and evaluation of the Executive Branch Agencies' implementation of and compliance with this Executive Order, and to provide advice and recommendations to the Director of Office of Management & Budget and the Governor.

a. The Council shall consist of eight members. One half of the Council's members shall be members

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of the Delaware Human Relations Commission who shall be nominated by the Chairperson of the Human Relations Commission and appointed by the Governor. One half of the Council's members shall be appointed by the Governor. All members of the Council shall serve at the pleasure of the Governor. The Chairperson of the Council shall be appointed by the Governor from among the Council's members, and shall serve as Chairperson at the pleasure of the Governor.

b. The Council shall receive staff support from Human Resource Management and the Office of Human Relations. The Division of Vocational Rehabilitation shall advise the Council on matters regarding persons with disabilities.

c. The Council shall furnish on October 30 of each year a written annual report to the Governor and the Director of the Office of Management & Budget on the progress being made in improving the diversity of the State's workforce and recommend any additional action which, in the Council's judgment, should be undertaken. Such report shall be available to the public.

5. On behalf of the Office of Management & Budget, Human Resource Management shall maintain the central managerial role over all diversity and equal employment matters in the Executive Branch and shall accept overall responsibility for the implementation and management of the policies and procedures set forth in this Order. The Director of Human Resource Management shall:

- a. establish the duties and responsibilities of the Equal Employment Opportunity/Affirmative Action Administrator and of Agency equal employment officers ("EEO officers");
- b. prepare and submit an annual Executive Department Affirmative Action plan, to include short and long term strategies;
- c. hold Agencies accountable for their implementation of this Order;
- d. act as the State of Delaware's liaison with the EEOC for federal reporting requirements; and
- e. communicate and coordinate diversity and equal opportunity initiatives across Agencies.

### AFFIRMATIVE ACTION PLANS

6. The head of each Executive Branch Agency shall maintain an Affirmative Action Plan which shall be filed annually with Human Resource Management and the Council on or before September 15.

7. Each Affirmative Action Plan referred to in paragraph 6 shall be in a form prescribed by Human Resource Management to ensure compliance with federal laws, state laws, and this Order. Each plan shall include, but shall not be limited to, the following provisions:

- a. A specific statement of goals and objectives designed to assure equal employment opportunities in hiring and promotion and to eliminate any unlawful discrimination in Agency employment;
- b. A specific statement of action steps designed to address any documented under-representation of minorities or women in the Agency as compared to Delaware's labor pool. Such action steps shall include:
  - (i.) Specific proposals for recruiting minorities and women for employment in the Agency to the extent that they are underrepresented in the Agency when compared to the relevant statewide labor market.
  - (ii.) Specific proposals for assuring that hiring practices are conducted consistently with the objectives of this Order.
  - (iii.) Specific proposals for assuring that all promotional opportunities are offered in a manner consistent with this Order.
  - (iv.) Specific proposals for staff participation in training programs on interview techniques and acceptable hiring practices.
  - (v.) Specific proposals for employee participation in career enhancement programs and seminars.
  - (vi.) Specific statements regarding the applicability of the following outreach, training, and accountability measures to the Agency's recruitment and retention efforts:
    - A. Job fairs
    - B. College and university outreach
    - C. Professional group outreach
    - D. Advertising

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- E. Employee recognition programs
  - F. Formal and informal mentoring
  - G. Internal leadership programs
  - H. Participation in statewide programs
  - I. Professional development for existing staff, including tuition reimbursement programs, attendance at conferences and seminars, and internal training opportunities.
  - J. Inclusion of recruitment and retention of women and minorities in Agency's strategic and staff plans.
  - K. Statements of Agency policy
  - L. Creation or continuation of Agency diversity committees.
  - M. Specific efforts of top leadership within the Agency
  - N. Internal communications efforts within the Agency
- c. A designation of the EEO officer within the Agency to carry out diversity and equal employment opportunity functions for the Executive Branch Agency.
8. Each Executive Branch Agency shall make available a summary or full copy of its Affirmative Action Plan to any employee upon request.

**RECRUITMENT AND PROMOTION OF A DIVERSE WORKFORCE**

9. To support the recruitment of a diverse workforce, the Director of Human Resource Management or designee shall:
- a. Assist Executive Branch Agencies in updating their Affirmative Action Plans in accordance with federal guidelines;
  - b. Develop, coordinate, and implement professional recruiting efforts throughout State government designed to increase the number of qualified women and minority candidates for State employment for positions and opportunities where women and minorities are under-represented. Human Resource Management shall develop a statewide directory of organizations that can serve as resources for the identification of qualified women and minority candidates in particular fields, so that these organizations can be notified regarding specific vacant positions;
  - c. Review and revise employment hiring procedures and Merit Rules to ensure a selection process that is fair, non-discriminatory and equitable;
  - d. Require Agencies filling merit positions at paygrade 15 and above to use an interview team of at least three members. When feasible, such a team should be diverse in its composition;
  - e. *Work with the State Manager of Training and Development to facilitate Statewide training and technical assistance programs to ensure compliance with State and Federal equal opportunity laws and this Order, and to inculcate effective recruitment and career development procedures; and*
  - f. *Work with the EEO officers and personnel officers of the various Executive Branch Agencies to review job classifications within those Agencies, and the qualifications of the employees of such Agencies, with a view toward eliminating any artificial barriers to hiring and promotion, and targeting appropriate employee career development seminars.*

**REPORTING REQUIREMENTS**

10. Each Executive Branch Agency shall:
- a. Be held accountable for compliance with this Order by including the measures and statements required in this Order in each manager's performance plan and each relevant Agency strategic plan;
  - b. Retain a record of all applicants who voluntarily divulge protected class information. The information required shall be prescribed by Human Resource Management and, to the extent practicable, shall be in a format consistent with the terminology and categories used in federal EEO standard forms;
  - c. Ask each terminating employee to participate in an exit interview to determine the reasons for that employee's termination and retain records of such interviews; and

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d. Report to Human Resource Management information requested by Human Resource Management concerning the Agency's Affirmative Action Plan.

11. Human Resource Management shall:

- a. Maintain a comprehensive, statewide, on-line, user-friendly system that allows continuous monitoring of the diversity of the State's workforce across all paygrades;
- b. Work with the Council to ensure the publication of clear information regarding the composition of the State's workforce;
- c. Submit a quarterly report to the Council; and
- d. Assist the Council in preparing its annual report.

### PUBLIC ACCOUNTABILITY

12. The Council, with the assistance of Human Resource Management and the Human Relations Commission staff, shall:

a. Establish a schedule for conducting an intensive review of each Executive Branch Agency in need of review based on criteria established by the Council, to assess compliance with the terms of this Executive Order, the Agency's Affirmative Action Plan, and equal opportunity laws. The review criteria shall be used to determine which Agencies will appear before the Council in priority order. The review shall involve an in-depth consideration of Agency promotion, hiring and recruiting practices. Each reviewed Agency shall receive a detailed report identifying those practices and policies of the Agency that are constructive and those practices and policies which need improvement or elimination, with specific recommendations for the Agency to consider. The Council shall incorporate a summary of the results of these reviews in its annual report, as required by paragraph 4 of this Order. From these annual reviews, Human Resource Management shall submit to each Executive Branch Agency a guidance memorandum identifying successful practices used by the reviewed Agencies to increase the diversity of their workforce and examples of policies and practices that hindered the State's attempt to create a more diverse workforce.

b. Publish, as a part of its annual report, an overall report on the composition of the State's workforce and the State's effectiveness in complying with equal employment laws and this Order.

### COMPLAINTS

13. Each Agency shall include in its Affirmative Action Plan a description of a mechanism or complaint procedure to permit and encourage employees to discuss any problems resulting from alleged bias, discrimination, lack of equal employment opportunity or any similar matters with appropriate division or Agency supervisory personnel. The procedure shall provide for the lodging of employee complaints and for a response to be made within a specified reasonable period of time. Employees shall be advised of their right to file a formal complaint with the Labor Law Enforcement Section of the Department of Labor. Employees shall receive such assistance with the complaint as may be requested from their Agency EEO officer.

14. Human Resource Management shall:

a. Post a public notice, in conspicuous locations or bulletin boards, of all cabinet Departments, major offices, divisions or Agencies which shall affirm the State's commitment to equal opportunity and advise all State employees and applicants for State employment that any complaints of discrimination should be promptly reported to the State Equal Employment Opportunity/Affirmative Action Program Administrator and the Labor Law Enforcement Section of the Department of Labor; and

b. Provide on the application form for state employment a statement of the state's commitment to equal employment opportunity and instructions as to how complaints of discrimination may be reported.

15. The complaint process for employment discrimination cases shall fall into two categories: informal and formal.

a. An informal complaint is filed with Human Resource Management by written or oral communication with the State Equal Employment Opportunity/Affirmative Action Program Administrator requesting the State Equal Employment Opportunity/Affirmative Action Program Administrator to attempt to facilitate resolution

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of the complaint. Human Resource Management will determine whether or not the complaint appears to fall within the jurisdiction of the Labor Law Enforcement Section of the Department of Labor and may require a formal charge of discrimination within the time limits prescribed by statute.

b. The State Equal Employment Opportunity/Affirmative Action Program Administrator will inquire into such cases by working through the designated Agency EEO officer and appropriate management staff, as deemed appropriate by the Cabinet Secretary. Based on the determination, the State Equal Employment Opportunity/Affirmative Action Program Administrator will respond in writing to the complainant. For allegations of violations to Title VII of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act of 1967 as amended, Vietnam Era Veterans Readjustment Assistance Act of 1979, the Americans with Disabilities Act of 1990, or Title 19 of the Delaware Code relating to discrimination in employment, the complainant will be advised and/or referred to the Labor Law Enforcement Section of the Department of Labor for investigation into filing a formal complaint even if a resolution is reached through Human Resource Management. Nothing in this Order shall be construed to bar mediation of a complaint by the State Human Relations Commission; however, such mediation shall not affect or in any way toll relevant time limitations.

**REPEAL OF PREVIOUS EXECUTIVE ORDERS**

16. Executive Order No. 10, dated January 30, 2001 is hereby repealed.

**APPLICABILITY OF EXECUTIVE ORDER**

17. This Order shall apply to all Cabinet Departments and Executive Agencies of the State. The members of the General Assembly and the Judiciary are also encouraged to adopt this Order.

18. No provision of this Order is intended to create any individual right or legal cause of action which does not already exist under state or federal law.

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State

Approved: February 1, 2006

STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

**EXECUTIVE ORDER NUMBER EIGHTY-TWO**

RE: Implementing Strategies To Address Energy Restructuring

**WHEREAS**, the Delaware Public Service Commission previously had regulatory authority over the electric generation business of Delmarva Power & Light Company ("Delmarva") and the Delaware Electric Cooperative ("DEC") in Delaware; and

**WHEREAS**, the Electric Utility Restructuring Act of 1999 (the "Act") deregulated the generation, supply and sale of electricity, including all related facilities and assets; and

**WHEREAS**, to help ease the transition to a competitive retail electric supply market, the Act provided for rate caps to be instituted, which included a rate decrease of 7.5 percent for Delmarva residential customers; and

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and

g. four members appointed by the Governor; one of whom shall be a representative of the private sector with relevant business experience or background; one of whom shall be knowledgeable in environmental protection, conservation and land use issues; one of whom shall be knowledgeable of needs of the homeless in Wilmington, New Castle County and the State; and one of whom shall be a representative of the local community being impacted by the closure of the Center.

All members of the Authority shall serve at the pleasure of the person or authority appointing them. The Chairperson of the Authority shall be appointed from among its members by the Governor and serve at the pleasure of the Governor.

6. The Authority shall report its progress to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor by May 1, 2007.

Approved: April 13, 2006

Ruth Ann Minner,  
Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

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STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

### EXECUTIVE ORDER NUMBER EIGHTY-SIX

**RE: Executive Order Number Eighty-Six Amending Executive Order Number Eighty-One**

**WHEREAS**, on February 1, 2006, I adopted Executive Order Number 81, which continues certain equal opportunity hiring standards and practices in Delaware State government; and

**WHEREAS**, the recitals of Executive Order No. 81 recognize that Delaware law or executive order prohibits discrimination in State employment based on gender, race color, religion, national origin, age, marital status, disability, sexual orientation, or Vietnam Era veterans' status; and

**WHEREAS**, Section 711 of Title 19 of the Delaware Code further prohibits discrimination in employment based upon genetic information; and

**WHEREAS**, for purposes of clarity and ease of reference, Executive Order No. 81 should be amended so that its recitals conform to the substantive provisions of the Order and also conform to Delaware law prohibiting all forms of discrimination that are unlawful under Title 19 of the Delaware Code,

**NOW THEREFORE, IT IS HEREBY ORDERED AND DECREED THAT:**

1. Executive Order No. 81 is amended, by striking the first recital paragraph of said Order and replacing it with the following:

"**WHEREAS**, Delaware law and/or executive order prohibit discrimination in state employment based on gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, Vietnam Era veterans status, or genetic information; and"

2. Except as otherwise provided herein, the provisions of Executive Order No. 81 shall remain effective in their entirety.

Approved: May 2, 2006

Ruth Ann Minner,  
Governor

ATTEST:

Harriet Smith Windsor, Secretary of State